

Patrick T. Perkins (PP 1694)  
PERKINS LAW OFFICE, P.C.  
1711 Route 9D  
Cold Spring, New York 10516  
Tel: (845) 265-2820  
Fax: (845) 265-2819  
pperkins@ptplaw.com

*Attorney for Plaintiffs*

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

DISNEY ENTERPRISES, INC.,  
HANNA-BARBERA PRODUCTIONS, INC.,  
SANRIO, INC. and DC COMICS,

Plaintiffs,

Case No.: 2:11-cv-06023

v.

ADOLPH RODRIGUEZ d/b/a  
PROFESSIONAL KIDS ENTERTAINMENT,  
LLC and d/b/a  
CLOWNS BRONX; and  
PROFESSIONAL KIDS ENTERTAINMENT,  
LLC d/b/a  
CLOWNZ BRONX,

Defendants.

\_\_\_\_\_ /

**SETTLEMENT AGREEMENT  
AND CONSENT TO PERMANENT INJUNCTION AND FINAL JUDGMENT**

Disney Enterprises, Inc., Hanna-Barbera Productions, Inc., Sanrio, Inc. and DC Comics (hereinafter referred to as the "Plaintiffs"), by and through their undersigned attorney, and Adolph Rodriguez d/b/a Professional Kids Entertainment, LLC and d/b/a Clowns Bronx and Professional Kids Entertainment, LLC d/b/a Clowns Bronx

(hereinafter referred to as the "Defendants"), hereby enter into the following Settlement Agreement and Consent to Permanent Injunction and Final Judgment (hereinafter referred to as the "Agreement"):

1. Plaintiffs and Defendants, collectively referred to hereafter as the Parties, have entered into the present Agreement with the intention of resolving all disputes alleged, or which could have been alleged, in the above referenced action.

2. Defendants agree and stipulate to the following facts and findings:

A. This Court has jurisdiction over Plaintiffs and Defendants and the Subject Matter of this action.

B. Plaintiffs are the owners and/or exclusive licensees of all trademarks and copyrights as identified on Exhibits "A" and "B" to the Permanent Injunction and Final Judgment attached to this Agreement as Exhibit "1", and hereinafter referred to as the "Trademarks and Copyrighted Properties." The registrations are valid and subsisting and are conclusive proof of the Plaintiffs' rights to the marks and properties noted.

C. Defendants have never been authorized by the Plaintiffs to rent, offer rental services, sell, offer for sale, perform, offer performance services, distribute or manufacture unauthorized products and/or services bearing unauthorized simulations, reproductions, counterfeits, copies, or colorable imitations of the Trademarks and Copyrighted Properties, or bearing any design that is of a substantially similar appearance to the Trademarks and Copyrighted Properties, or which reproduce the Trademarks and Copyrighted Properties in any manner that it is likely to cause

confusion concerning the source of such merchandise, including but not limited to character costumes (hereinafter referred to as "Infringing Character Services"). This Agreement has been reached by the Parties as settlement and compromise of disputed claims and is not an admission of wrongdoing by the Defendants.

D. Plaintiffs have alleged that they are suffering and have suffered irreparable injury as a result of Defendants' selling, offering for sale, renting, offering rental services, performing, offer performance services, distributing and/or manufacturing of the Infringing Character Services bearing unauthorized simulations, reproductions, counterfeits, copies, or colorable imitations of the Trademarks and Copyrighted Properties, or bearing a design that is of a substantially similar appearance to the Trademarks and Copyrighted Properties, or which reproduce the Trademarks and Copyrighted Properties in any manner that it is likely to cause confusion concerning the source of such product and/or service.

3. Defendants, shall not in the future sell, offer for sale, rent, offer rental services, perform, offer performance services, distribute or manufacture any kind of merchandise, including but not limited to the Infringing Character Services, bearing unauthorized simulations, reproductions, counterfeits, copies, or colorable imitations of the Trademarks and Copyrighted Properties, or bearing a design that is of a substantially similar appearance to the Trademarks and Copyrighted Properties, or which reproduce the Trademarks and Copyrighted Properties in any manner that it is likely to cause confusion concerning the source of such merchandise.

4. Defendants shall pay a settlement sum to Plaintiffs in the amount of Ten Thousand Dollars (\$10,000.00). Defendants shall make an initial lump sum payment in the amount of Five Thousand Dollars (\$5,000.00) on or before March 24, 2012. Defendants shall then make a lump sum payment in the amount of One Thousand Dollars (\$1,000.00) on or before April 24, 2012. Defendant shall then make five (5) consecutive monthly payments in the amount of Eight Hundred Dollars (\$800.00) with an initial payment due on or before May 24, 2012 and a final payment due on or before September 24, 2012. All settlement funds shall be made payable to **Holihan Law Trust Account** via cashiers, certified check, money order or insurance check and such payments shall be delivered, in a timely manner, consistent with the above defined payment schedule to the following address:

Holihan Law  
1101 North Lake Destiny Road  
Suite 275  
Maitland, Florida 32751

5. Defendants stipulate and agree to entry of a Permanent Injunction and Final Judgment against them in the form attached as Exhibit "1" enjoining them from knowingly selling, offering for sale, renting, offering rental services, performing, offering performance services, distributing or manufacturing of any kind of products and/or services, including but not limited to the Infringing Character Services, which bear unauthorized simulations, reproductions, counterfeits, copies, or colorable imitations of the Trademarks and Copyrighted Properties, or bearing a design that is of a substantially similar appearance to the Trademarks and Copyrighted Properties, or which reproduce the Trademarks and Copyrighted Properties in any manner that it is

likely to cause confusion concerning the source of such merchandise, unless authorized by the relevant owners of the Trademarks or Copyrighted Properties. The Permanent Injunction and Final Judgment provides for entry of a Final Judgment in favor of Plaintiffs in the amount of Fifty Thousand Dollars (\$50,000.00).

6. Defendants stipulate and agree to turn over all character costumes utilized in the provision of the Infringing Character Services, as identified by name in Paragraphs 23 and 33 to the Complaint as well as evidenced by photographs as attached Exhibits "C" and "D" to the Complaint (hereinafter referred to as the "Infringing Costumes"). All Infringing Costumes that Plaintiffs have knowledge of and have identified for Defendants have also been attached herein to this Agreement as Exhibit "2". Defendants will incur all costs of shipping the Infringing Costumes now and in the future.

7. Defendants stipulate and agree that any products turned over to Plaintiffs' counsel as provided for in this Agreement may be destroyed or disposed of at Plaintiffs' discretion and in such manner as Plaintiffs deem appropriate. These products include, but are not limited to, the Infringing Costumes. Defendants hereby waive any and all right, title, or interest to the Infringing Costumes and forever release Plaintiffs from any and all claims arising out of their disposition.

8. Defendants stipulate that they shall be in default of this Agreement by failing to make payment of damages as provided in paragraph 4, or by failing to turn over to Plaintiffs' undersigned counsel any and all Infringing Costumes knowingly in Defendants' possession at the time this Agreement is executed, or by knowingly

misrepresenting their source of the Infringing Costumes or to whom they have sold, rented or distributed the Infringing Costumes, or if they ever again knowingly violate any of the Plaintiffs' exclusive trademarks or copyrights or otherwise violate any terms of this Agreement.

9. Plaintiffs agree that, so long as Defendants are not in default of this Agreement, the Plaintiffs shall not record the Final Judgment or take any other action to collect on said Final Judgment. Should Plaintiffs become aware that Defendants are in possession of additional infringing character costumes (hereinafter "Additional Infringing Costumes") or allegedly violating this Agreement or the Final Judgment, Plaintiffs shall notify Defendants in writing and allow the Defendants ten (10) business days to cure the breach and/or turn over the Additional Infringing Costumes. Should Defendants become aware that they are in possession of Additional Infringing Costumes, Defendants shall notify Plaintiffs in writing and turn over all Additional Infringing Costumes within ten (10) business days. Defendants shall incur all costs to ship the Additional Infringing Costumes to Plaintiffs' counsel's office. If Defendants comply with the written requests made by Plaintiffs within the specified timeframe listed in this Agreement, Plaintiffs shall be estopped from alleging a breach to the terms of this Agreement and/or violation of the Final Judgment and injunction relief set forth therein. Any and all notice required or served pursuant to this Agreement shall be sent via overnight delivery to the Parties respective counsel.

10. Defendants stipulate and agree that, should Defendants default on this Agreement, Plaintiffs may record the Final Judgment and take all legal means to collect on said Final Judgment.

11. Defendants shall cooperate with Plaintiffs and will provide full and complete information concerning the source of the Infringing Costumes. Defendants shall truthfully respond to all inquiries by Plaintiffs' counsel regarding the Infringing Character Services as well as provide all supporting documents including but not limited to, receipts and/or invoices evidencing Defendants' purchase of the Infringing Costumes. Plaintiffs' counsel shall thereafter provide Defendants a declaration for execution (hereinafter referred to as the "Declaration") attesting to Defendants' source of the Infringing Costumes. Within fifteen (15) days of receipt of the Declaration by Defendants, Defendants will execute the Declaration and return to Plaintiffs' counsel. The Parties will work in good faith concerning the form and substance of the Declaration.

12. For and in consideration of the promises outlined throughout the aforementioned paragraphs, including but not limited to the Defendants' full, complete and timely payment of settlement funds as provided for in paragraph 4, the Plaintiffs agree that this Agreement will settle any and all claims and actions between Plaintiffs and Defendants, and Plaintiffs individually and collectively further release and forever discharge Defendants individually and collectively including their officers, directors, employees, affiliates, agents and servants of and from any and all causes of actions, suits, rights to attorneys' fees, debts, claims and demands whatsoever in law or equity

arising from or related to matters of the lawsuit, pending in the United States District Court, Eastern District of New York, including without limitation any claims arising from any alleged violation of any and all federal, state, or local laws, including those which relate to "the Trademarks and Copyrighted Properties" from the beginning of the world to the effective date of this Agreement.

13. For and in consideration of the promises outlined throughout the aforementioned paragraphs, Defendants agree that this Agreement will settle any and all claims and actions between Defendants and Plaintiffs, and further releases and forever discharge Plaintiffs of and from any and all causes of actions, suits, rights to attorneys' fees, debts, claims and demands whatsoever in law or equity arising from or related to matters of the lawsuit, pending in the United States District Court, Eastern District of New York, including without limitation any claims arising from Plaintiffs' enforcement of their rights related to "the Trademarks and Copyrighted Properties" from the beginning of the world to the effective date of this Agreement.

14. The Parties agree that they are entering into this Agreement knowingly and voluntarily, after having the opportunity to fully discuss it with their respective attorneys. Having had the opportunity to obtain the advice of legal counsel to review, comment upon, and redraft the Agreement, the Parties agree that the Agreement shall be construed as if the Parties jointly prepared it so that any uncertainty or ambiguity shall not be interpreted against any one Party and in favor of the others.

15. Should any provision of the Agreement be declared or determined by any court of competent jurisdiction to be illegal or invalid, the validity of the remaining




parts, terms, or provisions shall not be effected thereby and said illegal part, term, or provision shall be deemed not to be part of this Agreement and all other valid provisions shall survive and continue to bind the Parties.

16. This Agreement may be signed in counterparts. Additionally, electronic signatures and/or facsimile signatures are deemed to be acceptable as original signatures.

17. In reliance upon the truthfulness of all of the statements made above by Plaintiffs and Defendants, Defendants and Plaintiffs jointly move for this Court to enter a Permanent Injunction and Final Judgment with respect to Defendants as provided for in the Permanent Injunction and Final Judgment attached as Exhibit "1". Plaintiffs and Defendants stipulate and move that the Permanent Injunction and Final Judgment shall remain in full force and effect after the Court enters the Permanent Injunction and Final Judgment and, further, that this Court retain jurisdiction over this matter to enforce the terms of the Settlement Agreement, Permanent Injunction and Final Judgment.

**Signatures on Page 10**

Dated: 3-6-2012

  
Patrick T. Perkins (PP 1694)  
Perkins Law Office, P.C.  
1711 Route 9D  
Cold Spring, NY 105016  
Telephone: (854) 265-2820  
Fax: (854) 265-2819

~~Dated: \_\_\_\_\_~~


~~William S. Wright (WW 2213)  
Epstein Drangel, LLP  
60 E 42<sup>nd</sup> Street  
Suite 2410  
New York, NY 10165  
Telephone: (212) 292-5390  
Fax: (212) 292-5391  
wwright@ipcounselors.com~~

~~Attorney for Defendants~~

Dated: March 6, 2012

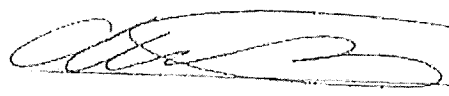
  
Michael W.O. Holihan  
Florida Bar No. 00782165  
Hailey Peterson  
Florida Bar No.: 0060026  
Holihan Law  
1101 North Lake Destiny Road  
Suite 275  
Maitland, FL 32751  
Telephone: (407) 660-8575  
Fax: (407) 660-0510  
michael.holihan@holihanlaw.com  
hailey.peterson@holihanlaw.com

Attorneys for Plaintiffs

  
Professional Kids Entertainment, LLC

By: 

Dated: 3-5-2012

  
Adolph Rodriguez

By: 

Dated: 3-5-2012